Instrumentalisation of migration

2021/0427(COD) - 15/12/2021 - Legislative proposal

PURPOSE: to ensure that the Schengen area can cope with the challenge of the instrumentalisation of migrants at the EU's external borders.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: instrumentalisation of migrants is when a third country instigates irregular migratory flows into the EU by actively encouraging or facilitating the movement of people from outside the EU to the external borders. The clear intention of the third country is to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security.

It is therefore important that the Union and its Member States are fully equipped to face any future instrumentalisation of migrants and respond rapidly to them.

CONTENT: this proposed regulation provides for specific rules that may be applied by a Member State in a situation of instrumentalisation of migrants where necessary for responding to such a situation. It accompanies the proposal to update the Schengen governance rules and builds on the Commission proposal on temporary measures to manage the situation at the external border with Belarus.

In particular, it lays down the following measures:

Emergency migration and asylum management procedure

This proposal lays down that the Member State facing a situation of instrumentalisation of migrants may **extend the registration deadline** for applications for international protection in relation to applications of third-country nationals or stateless persons apprehended or found in the proximity of the external border with the third country instrumentalising migrants in connection with an unauthorised crossing or after they have presented themselves at border crossing points, to up to **four weeks**. Prioritisation should be given to register the cases which are likely to be well-founded and applications made by unaccompanied minors, and minors and their families. This procedure allows Member States to apply the asylum border procedure to decide on all applications, except for medical cases. The maximum duration of the emergency asylum management procedure is 16 weeks.

Material reception facilities

This proposal extends the possibility to set different material reception conditions in a situation of instrumentalisation of migrants provided that basic needs are covered, including temporary shelter, food, water, clothing, adequate medical care, assistance to vulnerable persons, in full respect of the right to human dignity. The Member State concerned should ensure access and allow for the provision of humanitarian assistance by humanitarian organisations in line with the relevant needs.

Provision of support and solidarity measures

The proposal lays down the possibility for a Member State to request support and solidarity measures from other Member States. The Member State affected should **send a request to the Commission** requesting support and solidarity measures from other Member States. In addition, as regards operational support, a Member State facing a situation of instrumentalisation may request support from the EU Asylum Agency, the European Border and Coast Guard Agency or Europol in accordance with their mandates.

Emergency return management procedure

In a situation of instrumentalisation of migrants, it is essential to equip the Member State concerned with the necessary legal tools to ensure a swift return of those who do not qualify for international protection. The proposal therefore provides for the possibility to derogate from the proposal for an Asylum Procedure Regulation and from the application of the proposal for a Return Directive recast in relation to third country nationals or stateless persons whose application for international protection was rejected on the basis of the emergency asylum management procedure.

Safeguards

The proposal also provides for specific **safeguards**, notably concerning the respect of the principle of non-refoulement, taking account of the best interests of the child, family life and state of health of third-country nationals and stateless persons, as well as concerning the limitations to the use of coercive measures, postponement of removal, emergency health care, needs of vulnerable persons and detention conditions, while fully ensuring the fundamental rights of such persons.

Budgetary implications

Due to the nature of this proposal linked to a situation of instrumentalisation of migrants, it is not possible to estimate a priori the possible budgetary impact. Any costs arising from the implementation of this proposal will be accommodated within the budget of the existing EU funding instruments under the period 2021-2027 in the field of Migration and Asylum. Where exceptionally necessary, the flexibility mechanisms provided under the current multiannual financial framework under Council Regulation (EU, Euratom) 2020/2093 could be used.